

HB 3277 - S COMM AMD

By Committee on Human Services & Corrections

ADOPTED 03/01/2006

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 9.94A RCW  
4 to read as follows:

5 (1) In a prosecution for rape of a child in the first degree, rape  
6 of a child in the second degree, or child molestation in the first  
7 degree, the prosecuting attorney shall file a special allegation that  
8 the offense was predatory whenever sufficient admissible evidence  
9 exists, which, when considered with the most plausible, reasonably  
10 foreseeable defense that could be raised under the evidence, would  
11 justify a finding by a reasonable and objective fact-finder that the  
12 offense was predatory, unless the prosecuting attorney determines,  
13 after consulting with a victim, that filing a special allegation under  
14 this section is likely to interfere with the ability to obtain a  
15 conviction.

16 (2) Once a special allegation has been made under this section, the  
17 state has the burden to prove beyond a reasonable doubt that the  
18 offense was predatory. If a jury is had, the jury shall, if it finds  
19 the defendant guilty, also find a special verdict as to whether the  
20 offense was predatory. If no jury is had, the court shall make a  
21 finding of fact as to whether the offense was predatory.

22 (3) The prosecuting attorney shall not withdraw a special  
23 allegation filed under this section without the approval of the court  
24 through an order of dismissal of the allegation. The court may not  
25 dismiss the special allegation unless it finds that the order is  
26 necessary to correct an error in the initial charging decision or that  
27 there are evidentiary problems that make proving the special allegation  
28 doubtful.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 9.94A RCW  
2 to read as follows:

3        (1) In a prosecution for rape in the first degree, rape in the  
4 second degree, indecent liberties by forcible compulsion, or kidnapping  
5 in the first degree with sexual motivation, the prosecuting attorney  
6 shall file a special allegation that the victim of the offense was  
7 under fifteen years of age at the time of the offense whenever  
8 sufficient admissible evidence exists, which, when considered with the  
9 most plausible, reasonably foreseeable defense that could be raised  
10 under the evidence, would justify a finding by a reasonable and  
11 objective fact-finder that the victim was under fifteen years of age at  
12 the time of the offense, unless the prosecuting attorney determines,  
13 after consulting with a victim, that filing a special allegation under  
14 this section is likely to interfere with the ability to obtain a  
15 conviction.

16        (2) Once a special allegation has been made under this section, the  
17 state has the burden to prove beyond a reasonable doubt that the victim  
18 was under fifteen years of age at the time of the offense. If a jury  
19 is had, the jury shall, if it finds the defendant guilty, also find a  
20 special verdict as to whether the victim was under the age of fifteen  
21 at the time of the offense. If no jury is had, the court shall make a  
22 finding of fact as to whether the victim was under the age of fifteen  
23 at the time of the offense.

24        (3) The prosecuting attorney shall not withdraw a special  
25 allegation filed under this section without the approval of the court  
26 through an order of dismissal of the allegation. The court may not  
27 dismiss the special allegation unless it finds that the order is  
28 necessary to correct an error in the initial charging decision or that  
29 there are evidentiary problems that make proving the special allegation  
30 doubtful.

31        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 9.94A RCW  
32 to read as follows:

33        (1) In a prosecution for rape in the first degree, rape in the  
34 second degree with forcible compulsion, indecent liberties with  
35 forcible compulsion, or kidnapping in the first degree with sexual  
36 motivation, the prosecuting attorney shall file a special allegation  
37 that the victim of the offense was, at the time of the offense,

1 developmentally disabled, mentally disordered, or a frail elder or  
2 vulnerable adult, whenever sufficient admissible evidence exists,  
3 which, when considered with the most plausible, reasonably foreseeable  
4 defense that could be raised under the evidence, would justify a  
5 finding by a reasonable and objective fact-finder that the victim was,  
6 at the time of the offense, developmentally disabled, mentally  
7 disordered, or a frail elder or vulnerable adult, unless the  
8 prosecuting attorney determines, after consulting with a victim, that  
9 filing a special allegation under this section is likely to interfere  
10 with the ability to obtain a conviction.

11 (2) Once a special allegation has been made under this section, the  
12 state has the burden to prove beyond a reasonable doubt that the victim  
13 was, at the time of the offense, developmentally disabled, mentally  
14 disordered, or a frail elder or vulnerable adult. If a jury is had,  
15 the jury shall, if it finds the defendant guilty, also find a special  
16 verdict as to whether the victim was, at the time of the offense,  
17 developmentally disabled, mentally disordered, or a frail elder or  
18 vulnerable adult. If no jury is had, the court shall make a finding of  
19 fact as to whether the victim was, at the time of the offense,  
20 developmentally disabled, mentally disordered, or a frail elder or  
21 vulnerable adult.

22 (3) The prosecuting attorney shall not withdraw a special  
23 allegation filed under this section without the approval of the court  
24 through an order of dismissal of the allegation. The court may not  
25 dismiss the special allegation unless it finds that the order is  
26 necessary to correct an error in the initial charging decision or that  
27 there are evidentiary problems that make proving the special allegation  
28 doubtful.

29 (4) For purposes of this section, "developmentally disabled,"  
30 "mentally disordered," and "frail elder or vulnerable adult" have the  
31 same meaning as in RCW 9A.44.010.

32 **Sec. 4.** RCW 9.94A.712 and 2005 c 436 s 2 are each amended to read  
33 as follows:

34 (1) An offender who is not a persistent offender shall be sentenced  
35 under this section if the offender:

36 (a) Is convicted of:

1 (i) Rape in the first degree, rape in the second degree, rape of a  
2 child in the first degree, child molestation in the first degree, rape  
3 of a child in the second degree, or indecent liberties by forcible  
4 compulsion;

5 (ii) Any of the following offenses with a finding of sexual  
6 motivation: Murder in the first degree, murder in the second degree,  
7 homicide by abuse, kidnapping in the first degree, kidnapping in the  
8 second degree, assault in the first degree, assault in the second  
9 degree, assault of a child in the first degree, or burglary in the  
10 first degree; or

11 (iii) An attempt to commit any crime listed in this subsection  
12 (1)(a);  
13 committed on or after September 1, 2001; or

14 (b) Has a prior conviction for an offense listed in RCW  
15 9.94A.030(33)(b), and is convicted of any sex offense which was  
16 committed after September 1, 2001.

17 For purposes of this subsection (1)(b), failure to register is not  
18 a sex offense.

19 (2) An offender convicted of rape of a child in the first or second  
20 degree or child molestation in the first degree who was seventeen years  
21 of age or younger at the time of the offense shall not be sentenced  
22 under this section.

23 (3)(a) Upon a finding that the offender is subject to sentencing  
24 under this section, the court shall impose a sentence to a maximum term  
25 (~~consisting of the statutory maximum sentence for the offense~~) and a  
26 minimum term (~~either within the standard sentence range for the  
27 offense, or outside the standard sentence range pursuant to RCW  
28 9.94A.535, if the offender is otherwise eligible for such a sentence~~).

29 (b) The maximum term shall consist of the statutory maximum  
30 sentence for the offense.

31 (c)(i) Except as provided in (c)(ii) of this subsection, the  
32 minimum term shall be either within the standard sentence range for the  
33 offense, or outside the standard sentence range pursuant to RCW  
34 9.94A.535, if the offender is otherwise eligible for such a sentence.

35 (ii) If the offense that caused the offender to be sentenced under  
36 this section was rape of a child in the first degree, rape of a child  
37 in the second degree, or child molestation in the first degree, and  
38 there has been a finding that the offense was predatory under section

1 1 of this act, the minimum term shall be either the maximum of the  
2 standard sentence range for the offense or twenty-five years, whichever  
3 is greater. If the offense that caused the offender to be sentenced  
4 under this section was rape in the first degree, rape in the second  
5 degree, indecent liberties by forcible compulsion, or kidnapping in the  
6 first degree with sexual motivation, and there has been a finding that  
7 the victim was under the age of fifteen at the time of the offense  
8 under section 2 of this act, the minimum term shall be either the  
9 maximum of the standard sentence range for the offense or twenty-five  
10 years, whichever is greater. If the offense that caused the offender  
11 to be sentenced under this section is rape in the first degree, rape in  
12 the second degree with forcible compulsion, indecent liberties with  
13 forcible compulsion, or kidnapping in the first degree with sexual  
14 motivation, and there has been a finding under section 3 of this act  
15 that the victim was, at the time of the offense, developmentally  
16 disabled, mentally disordered, or a frail elder or vulnerable adult,  
17 the minimum sentence shall be either the maximum of the standard  
18 sentence range for the offense or twenty-five years, whichever is  
19 greater.

20 (d) The minimum terms in (c)(ii) of this subsection do not apply to  
21 a juvenile tried as an adult pursuant to RCW 13.04.030(1)(e)(i) or (v).  
22 The minimum term for such a juvenile shall be imposed under (c)(i) of  
23 this subsection.

24 (4) A person sentenced under subsection (3) of this section shall  
25 serve the sentence in a facility or institution operated, or utilized  
26 under contract, by the state.

27 (5) When a court sentences a person to the custody of the  
28 department under this section, the court shall, in addition to the  
29 other terms of the sentence, sentence the offender to community custody  
30 under the supervision of the department and the authority of the board  
31 for any period of time the person is released from total confinement  
32 before the expiration of the maximum sentence.

33 (6)(a)(i) Unless a condition is waived by the court, the conditions  
34 of community custody shall include those provided for in RCW  
35 9.94A.700(4). The conditions may also include those provided for in  
36 RCW 9.94A.700(5). The court may also order the offender to participate  
37 in rehabilitative programs or otherwise perform affirmative conduct  
38 reasonably related to the circumstances of the offense, the offender's

1 risk of reoffending, or the safety of the community, and the department  
2 and the board shall enforce such conditions pursuant to RCW 9.94A.713,  
3 9.95.425, and 9.95.430.

4 (ii) If the offense that caused the offender to be sentenced under  
5 this section was an offense listed in subsection (1)(a) of this section  
6 and the victim of the offense was under eighteen years of age at the  
7 time of the offense, the court shall, as a condition of community  
8 custody, prohibit the offender from residing in a community protection  
9 zone.

10 (b) As part of any sentence under this section, the court shall  
11 also require the offender to comply with any conditions imposed by the  
12 board under RCW 9.94A.713 and 9.95.420 through 9.95.435.

13 **Sec. 5.** RCW 9.94A.712 and 2004 c 176 s 3 are each amended to read  
14 as follows:

15 (1) An offender who is not a persistent offender shall be sentenced  
16 under this section if the offender:

17 (a) Is convicted of:

18 (i) Rape in the first degree, rape in the second degree, rape of a  
19 child in the first degree, child molestation in the first degree, rape  
20 of a child in the second degree, or indecent liberties by forcible  
21 compulsion;

22 (ii) Any of the following offenses with a finding of sexual  
23 motivation: Murder in the first degree, murder in the second degree,  
24 homicide by abuse, kidnapping in the first degree, kidnapping in the  
25 second degree, assault in the first degree, assault in the second  
26 degree, assault of a child in the first degree, or burglary in the  
27 first degree; or

28 (iii) An attempt to commit any crime listed in this subsection  
29 (1)(a);  
30 committed on or after September 1, 2001; or

31 (b) Has a prior conviction for an offense listed in RCW  
32 9.94A.030(32)(b), and is convicted of any sex offense which was  
33 committed after September 1, 2001.

34 For purposes of this subsection (1)(b), failure to register is not  
35 a sex offense.

36 (2) An offender convicted of rape of a child in the first or second

1 degree or child molestation in the first degree who was seventeen years  
2 of age or younger at the time of the offense shall not be sentenced  
3 under this section.

4 (3)(a) Upon a finding that the offender is subject to sentencing  
5 under this section, the court shall impose a sentence to a maximum term  
6 (~~consisting of the statutory maximum sentence for the offense~~) and a  
7 minimum term (~~either within the standard sentence range for the~~  
8 ~~offense, or outside the standard sentence range pursuant to RCW~~  
9 ~~9.94A.535, if the offender is otherwise eligible for such a sentence~~).

10 (b) The maximum term shall consist of the statutory maximum  
11 sentence for the offense.

12 (c)(i) Except as provided in (c)(ii) of this subsection, the  
13 minimum term shall be either within the standard sentence range for the  
14 offense, or outside the standard sentence range pursuant to RCW  
15 9.94A.535, if the offender is otherwise eligible for such a sentence.

16 (ii) If the offense that caused the offender to be sentenced under  
17 this section was rape of a child in the first degree, rape of a child  
18 in the second degree, or child molestation in the first degree, and  
19 there has been a finding that the offense was predatory under section  
20 1 of this act, the minimum term shall be either the maximum of the  
21 standard sentence range for the offense or twenty-five years, whichever  
22 is greater. If the offense that caused the offender to be sentenced  
23 under this section was rape in the first degree, rape in the second  
24 degree, indecent liberties by forcible compulsion, or kidnapping in the  
25 first degree with sexual motivation, and there has been a finding that  
26 the victim was under the age of fifteen at the time of the offense  
27 under section 2 of this act, the minimum term shall be either the  
28 maximum of the standard sentence range for the offense or twenty-five  
29 years, whichever is greater. If the offense that caused the offender  
30 to be sentenced under this section is rape in the first degree, rape in  
31 the second degree with forcible compulsion, indecent liberties with  
32 forcible compulsion, or kidnapping in the first degree with sexual  
33 motivation, and there has been a finding under section 3 of this act  
34 that the victim was, at the time of the offense, developmentally  
35 disabled, mentally disordered, or a frail elder or vulnerable adult,  
36 the minimum sentence shall be either the maximum of the standard  
37 sentence range for the offense or twenty-five years, whichever is  
38 greater.

1       (d) The minimum terms in (c)(ii) of this subsection do not apply to  
2 a juvenile tried as an adult pursuant to RCW 13.04.030(1)(e)(i) or (v).  
3 The minimum term for such a juvenile shall be imposed under (c)(i) of  
4 this subsection.

5       (4) A person sentenced under subsection (3) of this section shall  
6 serve the sentence in a facility or institution operated, or utilized  
7 under contract, by the state.

8       (5) When a court sentences a person to the custody of the  
9 department under this section, the court shall, in addition to the  
10 other terms of the sentence, sentence the offender to community custody  
11 under the supervision of the department and the authority of the board  
12 for any period of time the person is released from total confinement  
13 before the expiration of the maximum sentence.

14       (6)(a) Unless a condition is waived by the court, the conditions of  
15 community custody shall include those provided for in RCW 9.94A.700(4).  
16 The conditions may also include those provided for in RCW 9.94A.700(5).  
17 The court may also order the offender to participate in rehabilitative  
18 programs or otherwise perform affirmative conduct reasonably related to  
19 the circumstances of the offense, the offender's risk of reoffending,  
20 or the safety of the community, and the department and the board shall  
21 enforce such conditions pursuant to RCW 9.94A.713, 9.95.425, and  
22 9.95.430.

23       (b) As part of any sentence under this section, the court shall  
24 also require the offender to comply with any conditions imposed by the  
25 board under RCW 9.94A.713 and 9.95.420 through 9.95.435.

26       **Sec. 6.** RCW 9.94A.030 and 2005 c 436 s 1 are each amended to read  
27 as follows:

28       Unless the context clearly requires otherwise, the definitions in  
29 this section apply throughout this chapter.

30       (1) "Board" means the indeterminate sentence review board created  
31 under chapter 9.95 RCW.

32       (2) "Collect," or any derivative thereof, "collect and remit," or  
33 "collect and deliver," when used with reference to the department,  
34 means that the department, either directly or through a collection  
35 agreement authorized by RCW 9.94A.760, is responsible for monitoring  
36 and enforcing the offender's sentence with regard to the legal

1 financial obligation, receiving payment thereof from the offender, and,  
2 consistent with current law, delivering daily the entire payment to the  
3 superior court clerk without depositing it in a departmental account.

4 (3) "Commission" means the sentencing guidelines commission.

5 (4) "Community corrections officer" means an employee of the  
6 department who is responsible for carrying out specific duties in  
7 supervision of sentenced offenders and monitoring of sentence  
8 conditions.

9 (5) "Community custody" means that portion of an offender's  
10 sentence of confinement in lieu of earned release time or imposed  
11 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,  
12 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the  
13 community subject to controls placed on the offender's movement and  
14 activities by the department. For offenders placed on community  
15 custody for crimes committed on or after July 1, 2000, the department  
16 shall assess the offender's risk of reoffense and may establish and  
17 modify conditions of community custody, in addition to those imposed by  
18 the court, based upon the risk to community safety.

19 (6) "Community custody range" means the minimum and maximum period  
20 of community custody included as part of a sentence under RCW  
21 9.94A.715, as established by the commission or the legislature under  
22 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

23 (7) "Community placement" means that period during which the  
24 offender is subject to the conditions of community custody and/or  
25 postrelease supervision, which begins either upon completion of the  
26 term of confinement (postrelease supervision) or at such time as the  
27 offender is transferred to community custody in lieu of earned release.  
28 Community placement may consist of entirely community custody, entirely  
29 postrelease supervision, or a combination of the two.

30 (8) "Community protection zone" means the area within eight hundred  
31 eighty feet of the facilities and grounds of a public or private  
32 school.

33 (9) "Community restitution" means compulsory service, without  
34 compensation, performed for the benefit of the community by the  
35 offender.

36 (10) "Community supervision" means a period of time during which a  
37 convicted offender is subject to crime-related prohibitions and other  
38 sentence conditions imposed by a court pursuant to this chapter or RCW

1 16.52.200(6) or 46.61.524. Where the court finds that any offender has  
2 a chemical dependency that has contributed to his or her offense, the  
3 conditions of supervision may, subject to available resources, include  
4 treatment. For purposes of the interstate compact for out-of-state  
5 supervision of parolees and probationers, RCW 9.95.270, community  
6 supervision is the functional equivalent of probation and should be  
7 considered the same as probation by other states.

8 (11) "Confinement" means total or partial confinement.

9 (12) "Conviction" means an adjudication of guilt pursuant to Titles  
10 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
11 acceptance of a plea of guilty.

12 (13) "Crime-related prohibition" means an order of a court  
13 prohibiting conduct that directly relates to the circumstances of the  
14 crime for which the offender has been convicted, and shall not be  
15 construed to mean orders directing an offender affirmatively to  
16 participate in rehabilitative programs or to otherwise perform  
17 affirmative conduct. However, affirmative acts necessary to monitor  
18 compliance with the order of a court may be required by the department.

19 (14) "Criminal history" means the list of a defendant's prior  
20 convictions and juvenile adjudications, whether in this state, in  
21 federal court, or elsewhere.

22 (a) The history shall include, where known, for each conviction (i)  
23 whether the defendant has been placed on probation and the length and  
24 terms thereof; and (ii) whether the defendant has been incarcerated and  
25 the length of incarceration.

26 (b) A conviction may be removed from a defendant's criminal history  
27 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or  
28 a similar out-of-state statute, or if the conviction has been vacated  
29 pursuant to a governor's pardon.

30 (c) The determination of a defendant's criminal history is distinct  
31 from the determination of an offender score. A prior conviction that  
32 was not included in an offender score calculated pursuant to a former  
33 version of the sentencing reform act remains part of the defendant's  
34 criminal history.

35 (15) "Day fine" means a fine imposed by the sentencing court that  
36 equals the difference between the offender's net daily income and the  
37 reasonable obligations that the offender has for the support of the  
38 offender and any dependents.

1 (16) "Day reporting" means a program of enhanced supervision  
2 designed to monitor the offender's daily activities and compliance with  
3 sentence conditions, and in which the offender is required to report  
4 daily to a specific location designated by the department or the  
5 sentencing court.

6 (17) "Department" means the department of corrections.

7 (18) "Determinate sentence" means a sentence that states with  
8 exactitude the number of actual years, months, or days of total  
9 confinement, of partial confinement, of community supervision, the  
10 number of actual hours or days of community restitution work, or  
11 dollars or terms of a legal financial obligation. The fact that an  
12 offender through earned release can reduce the actual period of  
13 confinement shall not affect the classification of the sentence as a  
14 determinate sentence.

15 (19) "Disposable earnings" means that part of the earnings of an  
16 offender remaining after the deduction from those earnings of any  
17 amount required by law to be withheld. For the purposes of this  
18 definition, "earnings" means compensation paid or payable for personal  
19 services, whether denominated as wages, salary, commission, bonuses, or  
20 otherwise, and, notwithstanding any other provision of law making the  
21 payments exempt from garnishment, attachment, or other process to  
22 satisfy a court-ordered legal financial obligation, specifically  
23 includes periodic payments pursuant to pension or retirement programs,  
24 or insurance policies of any type, but does not include payments made  
25 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
26 or Title 74 RCW.

27 (20) "Drug offender sentencing alternative" is a sentencing option  
28 available to persons convicted of a felony offense other than a violent  
29 offense or a sex offense and who are eligible for the option under RCW  
30 9.94A.660.

31 (21) "Drug offense" means:

32 (a) Any felony violation of chapter 69.50 RCW except possession of  
33 a controlled substance (RCW 69.50.4013) or forged prescription for a  
34 controlled substance (RCW 69.50.403);

35 (b) Any offense defined as a felony under federal law that relates  
36 to the possession, manufacture, distribution, or transportation of a  
37 controlled substance; or

1 (c) Any out-of-state conviction for an offense that under the laws  
2 of this state would be a felony classified as a drug offense under (a)  
3 of this subsection.

4 (22) "Earned release" means earned release from confinement as  
5 provided in RCW 9.94A.728.

6 (23) "Escape" means:

7 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
8 first degree (RCW 9A.76.110), escape in the second degree (RCW  
9 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
10 willful failure to return from work release (RCW 72.65.070), or willful  
11 failure to be available for supervision by the department while in  
12 community custody (RCW 72.09.310); or

13 (b) Any federal or out-of-state conviction for an offense that  
14 under the laws of this state would be a felony classified as an escape  
15 under (a) of this subsection.

16 (24) "Felony traffic offense" means:

17 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
18 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
19 and-run injury-accident (RCW 46.52.020(4)); or

20 (b) Any federal or out-of-state conviction for an offense that  
21 under the laws of this state would be a felony classified as a felony  
22 traffic offense under (a) of this subsection.

23 (25) "Fine" means a specific sum of money ordered by the sentencing  
24 court to be paid by the offender to the court over a specific period of  
25 time.

26 (26) "First-time offender" means any person who has no prior  
27 convictions for a felony and is eligible for the first-time offender  
28 waiver under RCW 9.94A.650.

29 (27) "Home detention" means a program of partial confinement  
30 available to offenders wherein the offender is confined in a private  
31 residence subject to electronic surveillance.

32 (28) "Legal financial obligation" means a sum of money that is  
33 ordered by a superior court of the state of Washington for legal  
34 financial obligations which may include restitution to the victim,  
35 statutorily imposed crime victims' compensation fees as assessed  
36 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,  
37 court-appointed attorneys' fees, and costs of defense, fines, and any  
38 other financial obligation that is assessed to the offender as a result

1 of a felony conviction. Upon conviction for vehicular assault while  
2 under the influence of intoxicating liquor or any drug, RCW  
3 46.61.522(1)(b), or vehicular homicide while under the influence of  
4 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial  
5 obligations may also include payment to a public agency of the expense  
6 of an emergency response to the incident resulting in the conviction,  
7 subject to RCW 38.52.430.

8 (29) "Most serious offense" means any of the following felonies or  
9 a felony attempt to commit any of the following felonies:

10 (a) Any felony defined under any law as a class A felony or  
11 criminal solicitation of or criminal conspiracy to commit a class A  
12 felony;

13 (b) Assault in the second degree;

14 (c) Assault of a child in the second degree;

15 (d) Child molestation in the second degree;

16 (e) Controlled substance homicide;

17 (f) Extortion in the first degree;

18 (g) Incest when committed against a child under age fourteen;

19 (h) Indecent liberties;

20 (i) Kidnapping in the second degree;

21 (j) Leading organized crime;

22 (k) Manslaughter in the first degree;

23 (l) Manslaughter in the second degree;

24 (m) Promoting prostitution in the first degree;

25 (n) Rape in the third degree;

26 (o) Robbery in the second degree;

27 (p) Sexual exploitation;

28 (q) Vehicular assault, when caused by the operation or driving of  
29 a vehicle by a person while under the influence of intoxicating liquor  
30 or any drug or by the operation or driving of a vehicle in a reckless  
31 manner;

32 (r) Vehicular homicide, when proximately caused by the driving of  
33 any vehicle by any person while under the influence of intoxicating  
34 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
35 any vehicle in a reckless manner;

36 (s) Any other class B felony offense with a finding of sexual  
37 motivation;

1 (t) Any other felony with a deadly weapon verdict under RCW  
2 9.94A.602;

3 (u) Any felony offense in effect at any time prior to December 2,  
4 1993, that is comparable to a most serious offense under this  
5 subsection, or any federal or out-of-state conviction for an offense  
6 that under the laws of this state would be a felony classified as a  
7 most serious offense under this subsection;

8 (v)(i) A prior conviction for indecent liberties under RCW  
9 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
10 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
11 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
12 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

13 (ii) A prior conviction for indecent liberties under RCW  
14 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
15 if: (A) The crime was committed against a child under the age of  
16 fourteen; or (B) the relationship between the victim and perpetrator is  
17 included in the definition of indecent liberties under RCW  
18 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
19 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
20 through July 27, 1997.

21 (30) "Nonviolent offense" means an offense which is not a violent  
22 offense.

23 (31) "Offender" means a person who has committed a felony  
24 established by state law and is eighteen years of age or older or is  
25 less than eighteen years of age but whose case is under superior court  
26 jurisdiction under RCW 13.04.030 or has been transferred by the  
27 appropriate juvenile court to a criminal court pursuant to RCW  
28 13.40.110. Throughout this chapter, the terms "offender" and  
29 "defendant" are used interchangeably.

30 (32) "Partial confinement" means confinement for no more than one  
31 year in a facility or institution operated or utilized under contract  
32 by the state or any other unit of government, or, if home detention or  
33 work crew has been ordered by the court, in an approved residence, for  
34 a substantial portion of each day with the balance of the day spent in  
35 the community. Partial confinement includes work release, home  
36 detention, work crew, and a combination of work crew and home  
37 detention.

38 (33) "Persistent offender" is an offender who:

1 (a)(i) Has been convicted in this state of any felony considered a  
2 most serious offense; and

3 (ii) Has, before the commission of the offense under (a) of this  
4 subsection, been convicted as an offender on at least two separate  
5 occasions, whether in this state or elsewhere, of felonies that under  
6 the laws of this state would be considered most serious offenses and  
7 would be included in the offender score under RCW 9.94A.525; provided  
8 that of the two or more previous convictions, at least one conviction  
9 must have occurred before the commission of any of the other most  
10 serious offenses for which the offender was previously convicted; or

11 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
12 of a child in the first degree, child molestation in the first degree,  
13 rape in the second degree, rape of a child in the second degree, or  
14 indecent liberties by forcible compulsion; (B) any of the following  
15 offenses with a finding of sexual motivation: Murder in the first  
16 degree, murder in the second degree, homicide by abuse, kidnapping in  
17 the first degree, kidnapping in the second degree, assault in the first  
18 degree, assault in the second degree, assault of a child in the first  
19 degree, or burglary in the first degree; or (C) an attempt to commit  
20 any crime listed in this subsection (33)(b)(i); and

21 (ii) Has, before the commission of the offense under (b)(i) of this  
22 subsection, been convicted as an offender on at least one occasion,  
23 whether in this state or elsewhere, of an offense listed in (b)(i) of  
24 this subsection or any federal or out-of-state offense or offense under  
25 prior Washington law that is comparable to the offenses listed in  
26 (b)(i) of this subsection. A conviction for rape of a child in the  
27 first degree constitutes a conviction under (b)(i) of this subsection  
28 only when the offender was sixteen years of age or older when the  
29 offender committed the offense. A conviction for rape of a child in  
30 the second degree constitutes a conviction under (b)(i) of this  
31 subsection only when the offender was eighteen years of age or older  
32 when the offender committed the offense.

33 (34) "Postrelease supervision" is that portion of an offender's  
34 community placement that is not community custody.

35 (35) "Predatory" means: (a) The perpetrator of the crime was a  
36 stranger to the victim, as defined in this section; (b) the perpetrator  
37 established or promoted a relationship with the victim prior to the  
38 offense and the victimization of the victim was a significant reason

1 the perpetrator established or promoted the relationship; or (c) the  
2 perpetrator was: (i) A teacher, counselor, volunteer, or other person  
3 in authority in any public or private school and the victim was a  
4 student of the school under his or her authority or supervision. For  
5 purposes of this subsection, "school" does not include home-based  
6 instruction as defined in RCW 28A.225.010; (ii) a coach, trainer,  
7 volunteer, or other person in authority in any recreational activity  
8 and the victim was a participant in the activity under his or her  
9 authority or supervision; or (iii) a pastor, elder, volunteer, or other  
10 person in authority in any church or religious organization, and the  
11 victim was a member or participant of the organization under his or her  
12 authority.

13 (36) "Private school" means a school regulated under chapter  
14 28A.195 or 28A.205 RCW.

15 ~~((+36+))~~ (37) "Public school" has the same meaning as in RCW  
16 28A.150.010.

17 ~~((+37+))~~ (38) "Restitution" means a specific sum of money ordered  
18 by the sentencing court to be paid by the offender to the court over a  
19 specified period of time as payment of damages. The sum may include  
20 both public and private costs.

21 ~~((+38+))~~ (39) "Risk assessment" means the application of an  
22 objective instrument supported by research and adopted by the  
23 department for the purpose of assessing an offender's risk of  
24 reoffense, taking into consideration the nature of the harm done by the  
25 offender, place and circumstances of the offender related to risk, the  
26 offender's relationship to any victim, and any information provided to  
27 the department by victims. The results of a risk assessment shall not  
28 be based on unconfirmed or unconfirmable allegations.

29 ~~((+39+))~~ (40) "Serious traffic offense" means:

30 (a) Driving while under the influence of intoxicating liquor or any  
31 drug (RCW 46.61.502), actual physical control while under the influence  
32 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving  
33 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));  
34 or

35 (b) Any federal, out-of-state, county, or municipal conviction for  
36 an offense that under the laws of this state would be classified as a  
37 serious traffic offense under (a) of this subsection.

1       (~~(40)~~) (41) "Serious violent offense" is a subcategory of violent  
2 offense and means:  
3       (a)(i) Murder in the first degree;  
4       (ii) Homicide by abuse;  
5       (iii) Murder in the second degree;  
6       (iv) Manslaughter in the first degree;  
7       (v) Assault in the first degree;  
8       (vi) Kidnapping in the first degree;  
9       (vii) Rape in the first degree;  
10       (viii) Assault of a child in the first degree; or  
11       (ix) An attempt, criminal solicitation, or criminal conspiracy to  
12 commit one of these felonies; or  
13       (b) Any federal or out-of-state conviction for an offense that  
14 under the laws of this state would be a felony classified as a serious  
15 violent offense under (a) of this subsection.  
16       (~~(41)~~) (42) "Sex offense" means:  
17       (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
18 RCW 9A.44.130(11);  
19       (ii) A violation of RCW 9A.64.020;  
20       (iii) A felony that is a violation of chapter 9.68A RCW other than  
21 RCW 9.68A.070 or 9.68A.080; or  
22       (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
23 criminal solicitation, or criminal conspiracy to commit such crimes;  
24       (b) Any conviction for a felony offense in effect at any time prior  
25 to July 1, 1976, that is comparable to a felony classified as a sex  
26 offense in (a) of this subsection;  
27       (c) A felony with a finding of sexual motivation under RCW  
28 9.94A.835 or 13.40.135; or  
29       (d) Any federal or out-of-state conviction for an offense that  
30 under the laws of this state would be a felony classified as a sex  
31 offense under (a) of this subsection.  
32       (~~(42)~~) (43) "Sexual motivation" means that one of the purposes  
33 for which the defendant committed the crime was for the purpose of his  
34 or her sexual gratification.  
35       (~~(43)~~) (44) "Standard sentence range" means the sentencing  
36 court's discretionary range in imposing a nonappealable sentence.  
37       (~~(44)~~) (45) "Statutory maximum sentence" means the maximum length

1 of time for which an offender may be confined as punishment for a crime  
2 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining  
3 the crime, or other statute defining the maximum penalty for a crime.

4 ~~((45))~~ (46) "Stranger" means that the victim did not know the  
5 offender twenty-four hours before the offense.

6 (47) "Total confinement" means confinement inside the physical  
7 boundaries of a facility or institution operated or utilized under  
8 contract by the state or any other unit of government for twenty-four  
9 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

10 ~~((46))~~ (48) "Transition training" means written and verbal  
11 instructions and assistance provided by the department to the offender  
12 during the two weeks prior to the offender's successful completion of  
13 the work ethic camp program. The transition training shall include  
14 instructions in the offender's requirements and obligations during the  
15 offender's period of community custody.

16 ~~((47))~~ (49) "Victim" means any person who has sustained  
17 emotional, psychological, physical, or financial injury to person or  
18 property as a direct result of the crime charged.

19 ~~((48))~~ (50) "Violent offense" means:

20 (a) Any of the following felonies:

21 (i) Any felony defined under any law as a class A felony or an  
22 attempt to commit a class A felony;

23 (ii) Criminal solicitation of or criminal conspiracy to commit a  
24 class A felony;

25 (iii) Manslaughter in the first degree;

26 (iv) Manslaughter in the second degree;

27 (v) Indecent liberties if committed by forcible compulsion;

28 (vi) Kidnapping in the second degree;

29 (vii) Arson in the second degree;

30 (viii) Assault in the second degree;

31 (ix) Assault of a child in the second degree;

32 (x) Extortion in the first degree;

33 (xi) Robbery in the second degree;

34 (xii) Drive-by shooting;

35 (xiii) Vehicular assault, when caused by the operation or driving  
36 of a vehicle by a person while under the influence of intoxicating  
37 liquor or any drug or by the operation or driving of a vehicle in a  
38 reckless manner; and

1 (xiv) Vehicular homicide, when proximately caused by the driving of  
2 any vehicle by any person while under the influence of intoxicating  
3 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
4 any vehicle in a reckless manner;

5 (b) Any conviction for a felony offense in effect at any time prior  
6 to July 1, 1976, that is comparable to a felony classified as a violent  
7 offense in (a) of this subsection; and

8 (c) Any federal or out-of-state conviction for an offense that  
9 under the laws of this state would be a felony classified as a violent  
10 offense under (a) or (b) of this subsection.

11 (~~(49)~~) (51) "Work crew" means a program of partial confinement  
12 consisting of civic improvement tasks for the benefit of the community  
13 that complies with RCW 9.94A.725.

14 (~~(50)~~) (52) "Work ethic camp" means an alternative incarceration  
15 program as provided in RCW 9.94A.690 designed to reduce recidivism and  
16 lower the cost of corrections by requiring offenders to complete a  
17 comprehensive array of real-world job and vocational experiences,  
18 character-building work ethics training, life management skills  
19 development, substance abuse rehabilitation, counseling, literacy  
20 training, and basic adult education.

21 (~~(51)~~) (53) "Work release" means a program of partial confinement  
22 available to offenders who are employed or engaged as a student in a  
23 regular course of study at school.

24 **Sec. 7.** RCW 9.94A.030 and 2003 c 53 s 55 are each amended to read  
25 as follows:

26 Unless the context clearly requires otherwise, the definitions in  
27 this section apply throughout this chapter.

28 (1) "Board" means the indeterminate sentence review board created  
29 under chapter 9.95 RCW.

30 (2) "Collect," or any derivative thereof, "collect and remit," or  
31 "collect and deliver," when used with reference to the department,  
32 means that the department, either directly or through a collection  
33 agreement authorized by RCW 9.94A.760, is responsible for monitoring  
34 and enforcing the offender's sentence with regard to the legal  
35 financial obligation, receiving payment thereof from the offender, and,  
36 consistent with current law, delivering daily the entire payment to the  
37 superior court clerk without depositing it in a departmental account.

1 (3) "Commission" means the sentencing guidelines commission.

2 (4) "Community corrections officer" means an employee of the  
3 department who is responsible for carrying out specific duties in  
4 supervision of sentenced offenders and monitoring of sentence  
5 conditions.

6 (5) "Community custody" means that portion of an offender's  
7 sentence of confinement in lieu of earned release time or imposed  
8 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,  
9 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the  
10 community subject to controls placed on the offender's movement and  
11 activities by the department. For offenders placed on community  
12 custody for crimes committed on or after July 1, 2000, the department  
13 shall assess the offender's risk of reoffense and may establish and  
14 modify conditions of community custody, in addition to those imposed by  
15 the court, based upon the risk to community safety.

16 (6) "Community custody range" means the minimum and maximum period  
17 of community custody included as part of a sentence under RCW  
18 9.94A.715, as established by the commission or the legislature under  
19 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

20 (7) "Community placement" means that period during which the  
21 offender is subject to the conditions of community custody and/or  
22 postrelease supervision, which begins either upon completion of the  
23 term of confinement (postrelease supervision) or at such time as the  
24 offender is transferred to community custody in lieu of earned release.  
25 Community placement may consist of entirely community custody, entirely  
26 postrelease supervision, or a combination of the two.

27 (8) "Community restitution" means compulsory service, without  
28 compensation, performed for the benefit of the community by the  
29 offender.

30 (9) "Community supervision" means a period of time during which a  
31 convicted offender is subject to crime-related prohibitions and other  
32 sentence conditions imposed by a court pursuant to this chapter or RCW  
33 16.52.200(6) or 46.61.524. Where the court finds that any offender has  
34 a chemical dependency that has contributed to his or her offense, the  
35 conditions of supervision may, subject to available resources, include  
36 treatment. For purposes of the interstate compact for out-of-state  
37 supervision of parolees and probationers, RCW 9.95.270, community

1 supervision is the functional equivalent of probation and should be  
2 considered the same as probation by other states.

3 (10) "Confinement" means total or partial confinement.

4 (11) "Conviction" means an adjudication of guilt pursuant to Titles  
5 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
6 acceptance of a plea of guilty.

7 (12) "Crime-related prohibition" means an order of a court  
8 prohibiting conduct that directly relates to the circumstances of the  
9 crime for which the offender has been convicted, and shall not be  
10 construed to mean orders directing an offender affirmatively to  
11 participate in rehabilitative programs or to otherwise perform  
12 affirmative conduct. However, affirmative acts necessary to monitor  
13 compliance with the order of a court may be required by the department.

14 (13) "Criminal history" means the list of a defendant's prior  
15 convictions and juvenile adjudications, whether in this state, in  
16 federal court, or elsewhere.

17 (a) The history shall include, where known, for each conviction (i)  
18 whether the defendant has been placed on probation and the length and  
19 terms thereof; and (ii) whether the defendant has been incarcerated and  
20 the length of incarceration.

21 (b) A conviction may be removed from a defendant's criminal history  
22 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or  
23 a similar out-of-state statute, or if the conviction has been vacated  
24 pursuant to a governor's pardon.

25 (c) The determination of a defendant's criminal history is distinct  
26 from the determination of an offender score. A prior conviction that  
27 was not included in an offender score calculated pursuant to a former  
28 version of the sentencing reform act remains part of the defendant's  
29 criminal history.

30 (14) "Day fine" means a fine imposed by the sentencing court that  
31 equals the difference between the offender's net daily income and the  
32 reasonable obligations that the offender has for the support of the  
33 offender and any dependents.

34 (15) "Day reporting" means a program of enhanced supervision  
35 designed to monitor the offender's daily activities and compliance with  
36 sentence conditions, and in which the offender is required to report  
37 daily to a specific location designated by the department or the  
38 sentencing court.

1 (16) "Department" means the department of corrections.

2 (17) "Determinate sentence" means a sentence that states with  
3 exactitude the number of actual years, months, or days of total  
4 confinement, of partial confinement, of community supervision, the  
5 number of actual hours or days of community restitution work, or  
6 dollars or terms of a legal financial obligation. The fact that an  
7 offender through earned release can reduce the actual period of  
8 confinement shall not affect the classification of the sentence as a  
9 determinate sentence.

10 (18) "Disposable earnings" means that part of the earnings of an  
11 offender remaining after the deduction from those earnings of any  
12 amount required by law to be withheld. For the purposes of this  
13 definition, "earnings" means compensation paid or payable for personal  
14 services, whether denominated as wages, salary, commission, bonuses, or  
15 otherwise, and, notwithstanding any other provision of law making the  
16 payments exempt from garnishment, attachment, or other process to  
17 satisfy a court-ordered legal financial obligation, specifically  
18 includes periodic payments pursuant to pension or retirement programs,  
19 or insurance policies of any type, but does not include payments made  
20 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
21 or Title 74 RCW.

22 (19) "Drug offender sentencing alternative" is a sentencing option  
23 available to persons convicted of a felony offense other than a violent  
24 offense or a sex offense and who are eligible for the option under RCW  
25 9.94A.660.

26 (20) "Drug offense" means:

27 (a) Any felony violation of chapter 69.50 RCW except possession of  
28 a controlled substance (RCW 69.50.4013) or forged prescription for a  
29 controlled substance (RCW 69.50.403);

30 (b) Any offense defined as a felony under federal law that relates  
31 to the possession, manufacture, distribution, or transportation of a  
32 controlled substance; or

33 (c) Any out-of-state conviction for an offense that under the laws  
34 of this state would be a felony classified as a drug offense under (a)  
35 of this subsection.

36 (21) "Earned release" means earned release from confinement as  
37 provided in RCW 9.94A.728.

38 (22) "Escape" means:

1 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
2 first degree (RCW 9A.76.110), escape in the second degree (RCW  
3 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
4 willful failure to return from work release (RCW 72.65.070), or willful  
5 failure to be available for supervision by the department while in  
6 community custody (RCW 72.09.310); or

7 (b) Any federal or out-of-state conviction for an offense that  
8 under the laws of this state would be a felony classified as an escape  
9 under (a) of this subsection.

10 (23) "Felony traffic offense" means:

11 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
12 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
13 and-run injury-accident (RCW 46.52.020(4)); or

14 (b) Any federal or out-of-state conviction for an offense that  
15 under the laws of this state would be a felony classified as a felony  
16 traffic offense under (a) of this subsection.

17 (24) "Fine" means a specific sum of money ordered by the sentencing  
18 court to be paid by the offender to the court over a specific period of  
19 time.

20 (25) "First-time offender" means any person who has no prior  
21 convictions for a felony and is eligible for the first-time offender  
22 waiver under RCW 9.94A.650.

23 (26) "Home detention" means a program of partial confinement  
24 available to offenders wherein the offender is confined in a private  
25 residence subject to electronic surveillance.

26 (27) "Legal financial obligation" means a sum of money that is  
27 ordered by a superior court of the state of Washington for legal  
28 financial obligations which may include restitution to the victim,  
29 statutorily imposed crime victims' compensation fees as assessed  
30 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,  
31 court-appointed attorneys' fees, and costs of defense, fines, and any  
32 other financial obligation that is assessed to the offender as a result  
33 of a felony conviction. Upon conviction for vehicular assault while  
34 under the influence of intoxicating liquor or any drug, RCW  
35 46.61.522(1)(b), or vehicular homicide while under the influence of  
36 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial  
37 obligations may also include payment to a public agency of the expense

1 of an emergency response to the incident resulting in the conviction,  
2 subject to RCW 38.52.430.

3 (28) "Most serious offense" means any of the following felonies or  
4 a felony attempt to commit any of the following felonies:

5 (a) Any felony defined under any law as a class A felony or  
6 criminal solicitation of or criminal conspiracy to commit a class A  
7 felony;

8 (b) Assault in the second degree;

9 (c) Assault of a child in the second degree;

10 (d) Child molestation in the second degree;

11 (e) Controlled substance homicide;

12 (f) Extortion in the first degree;

13 (g) Incest when committed against a child under age fourteen;

14 (h) Indecent liberties;

15 (i) Kidnapping in the second degree;

16 (j) Leading organized crime;

17 (k) Manslaughter in the first degree;

18 (l) Manslaughter in the second degree;

19 (m) Promoting prostitution in the first degree;

20 (n) Rape in the third degree;

21 (o) Robbery in the second degree;

22 (p) Sexual exploitation;

23 (q) Vehicular assault, when caused by the operation or driving of  
24 a vehicle by a person while under the influence of intoxicating liquor  
25 or any drug or by the operation or driving of a vehicle in a reckless  
26 manner;

27 (r) Vehicular homicide, when proximately caused by the driving of  
28 any vehicle by any person while under the influence of intoxicating  
29 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
30 any vehicle in a reckless manner;

31 (s) Any other class B felony offense with a finding of sexual  
32 motivation;

33 (t) Any other felony with a deadly weapon verdict under RCW  
34 9.94A.602;

35 (u) Any felony offense in effect at any time prior to December 2,  
36 1993, that is comparable to a most serious offense under this  
37 subsection, or any federal or out-of-state conviction for an offense

1 that under the laws of this state would be a felony classified as a  
2 most serious offense under this subsection;

3 (v)(i) A prior conviction for indecent liberties under RCW  
4 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
5 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
6 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
7 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

8 (ii) A prior conviction for indecent liberties under RCW  
9 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
10 if: (A) The crime was committed against a child under the age of  
11 fourteen; or (B) the relationship between the victim and perpetrator is  
12 included in the definition of indecent liberties under RCW  
13 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
14 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
15 through July 27, 1997.

16 (29) "Nonviolent offense" means an offense which is not a violent  
17 offense.

18 (30) "Offender" means a person who has committed a felony  
19 established by state law and is eighteen years of age or older or is  
20 less than eighteen years of age but whose case is under superior court  
21 jurisdiction under RCW 13.04.030 or has been transferred by the  
22 appropriate juvenile court to a criminal court pursuant to RCW  
23 13.40.110. Throughout this chapter, the terms "offender" and  
24 "defendant" are used interchangeably.

25 (31) "Partial confinement" means confinement for no more than one  
26 year in a facility or institution operated or utilized under contract  
27 by the state or any other unit of government, or, if home detention or  
28 work crew has been ordered by the court, in an approved residence, for  
29 a substantial portion of each day with the balance of the day spent in  
30 the community. Partial confinement includes work release, home  
31 detention, work crew, and a combination of work crew and home  
32 detention.

33 (32) "Persistent offender" is an offender who:

34 (a)(i) Has been convicted in this state of any felony considered a  
35 most serious offense; and

36 (ii) Has, before the commission of the offense under (a) of this  
37 subsection, been convicted as an offender on at least two separate  
38 occasions, whether in this state or elsewhere, of felonies that under

1 the laws of this state would be considered most serious offenses and  
2 would be included in the offender score under RCW 9.94A.525; provided  
3 that of the two or more previous convictions, at least one conviction  
4 must have occurred before the commission of any of the other most  
5 serious offenses for which the offender was previously convicted; or

6 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
7 of a child in the first degree, child molestation in the first degree,  
8 rape in the second degree, rape of a child in the second degree, or  
9 indecent liberties by forcible compulsion; (B) any of the following  
10 offenses with a finding of sexual motivation: Murder in the first  
11 degree, murder in the second degree, homicide by abuse, kidnapping in  
12 the first degree, kidnapping in the second degree, assault in the first  
13 degree, assault in the second degree, assault of a child in the first  
14 degree, or burglary in the first degree; or (C) an attempt to commit  
15 any crime listed in this subsection (32)(b)(i); and

16 (ii) Has, before the commission of the offense under (b)(i) of this  
17 subsection, been convicted as an offender on at least one occasion,  
18 whether in this state or elsewhere, of an offense listed in (b)(i) of  
19 this subsection or any federal or out-of-state offense or offense under  
20 prior Washington law that is comparable to the offenses listed in  
21 (b)(i) of this subsection. A conviction for rape of a child in the  
22 first degree constitutes a conviction under (b)(i) of this subsection  
23 only when the offender was sixteen years of age or older when the  
24 offender committed the offense. A conviction for rape of a child in  
25 the second degree constitutes a conviction under (b)(i) of this  
26 subsection only when the offender was eighteen years of age or older  
27 when the offender committed the offense.

28 (33) "Postrelease supervision" is that portion of an offender's  
29 community placement that is not community custody.

30 (34) "Predatory" means: (a) The perpetrator of the crime was a  
31 stranger to the victim, as defined in this section; (b) the perpetrator  
32 established or promoted a relationship with the victim prior to the  
33 offense and the victimization of the victim was a significant reason  
34 the perpetrator established or promoted the relationship; or (c) the  
35 perpetrator was: (i) A teacher, counselor, volunteer, or other person  
36 in authority in any public or private school and the victim was a  
37 student of the school under his or her authority or supervision. For  
38 purposes of this subsection, "school" does not include home-based

1 instruction as defined in RCW 28A.225.010; (ii) a coach, trainer,  
2 volunteer, or other person in authority in any recreational activity  
3 and the victim was a participant in the activity under his or her  
4 authority or supervision; or (iii) a pastor, elder, volunteer, or other  
5 person in authority in any church or religious organization, and the  
6 victim was a member or participant of the organization under his or her  
7 authority.

8 (35) "Restitution" means a specific sum of money ordered by the  
9 sentencing court to be paid by the offender to the court over a  
10 specified period of time as payment of damages. The sum may include  
11 both public and private costs.

12 ((+35+)) (36) "Risk assessment" means the application of an  
13 objective instrument supported by research and adopted by the  
14 department for the purpose of assessing an offender's risk of  
15 reoffense, taking into consideration the nature of the harm done by the  
16 offender, place and circumstances of the offender related to risk, the  
17 offender's relationship to any victim, and any information provided to  
18 the department by victims. The results of a risk assessment shall not  
19 be based on unconfirmed or unconfirmable allegations.

20 ((+36+)) (37) "Serious traffic offense" means:

21 (a) Driving while under the influence of intoxicating liquor or any  
22 drug (RCW 46.61.502), actual physical control while under the influence  
23 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving  
24 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));  
25 or

26 (b) Any federal, out-of-state, county, or municipal conviction for  
27 an offense that under the laws of this state would be classified as a  
28 serious traffic offense under (a) of this subsection.

29 ((+37+)) (38) "Serious violent offense" is a subcategory of violent  
30 offense and means:

- 31 (a)(i) Murder in the first degree;
- 32 (ii) Homicide by abuse;
- 33 (iii) Murder in the second degree;
- 34 (iv) Manslaughter in the first degree;
- 35 (v) Assault in the first degree;
- 36 (vi) Kidnapping in the first degree;
- 37 (vii) Rape in the first degree;
- 38 (viii) Assault of a child in the first degree; or

1 (ix) An attempt, criminal solicitation, or criminal conspiracy to  
2 commit one of these felonies; or

3 (b) Any federal or out-of-state conviction for an offense that  
4 under the laws of this state would be a felony classified as a serious  
5 violent offense under (a) of this subsection.

6 ~~((38))~~ (39) "Sex offense" means:

7 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
8 RCW 9A.44.130(11);

9 (ii) A violation of RCW 9A.64.020;

10 (iii) A felony that is a violation of chapter 9.68A RCW other than  
11 RCW 9.68A.070 or 9.68A.080; or

12 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
13 criminal solicitation, or criminal conspiracy to commit such crimes;

14 (b) Any conviction for a felony offense in effect at any time prior  
15 to July 1, 1976, that is comparable to a felony classified as a sex  
16 offense in (a) of this subsection;

17 (c) A felony with a finding of sexual motivation under RCW  
18 9.94A.835 or 13.40.135; or

19 (d) Any federal or out-of-state conviction for an offense that  
20 under the laws of this state would be a felony classified as a sex  
21 offense under (a) of this subsection.

22 ~~((39))~~ (40) "Sexual motivation" means that one of the purposes  
23 for which the defendant committed the crime was for the purpose of his  
24 or her sexual gratification.

25 ~~((40))~~ (41) "Standard sentence range" means the sentencing  
26 court's discretionary range in imposing a nonappealable sentence.

27 ~~((41))~~ (42) "Statutory maximum sentence" means the maximum length  
28 of time for which an offender may be confined as punishment for a crime  
29 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining  
30 the crime, or other statute defining the maximum penalty for a crime.

31 ~~((42))~~ (43) "Stranger" means that the victim did not know the  
32 offender twenty-four hours before the offense.

33 (44) "Total confinement" means confinement inside the physical  
34 boundaries of a facility or institution operated or utilized under  
35 contract by the state or any other unit of government for twenty-four  
36 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

37 ~~((43))~~ (45) "Transition training" means written and verbal  
38 instructions and assistance provided by the department to the offender

1 during the two weeks prior to the offender's successful completion of  
2 the work ethic camp program. The transition training shall include  
3 instructions in the offender's requirements and obligations during the  
4 offender's period of community custody.

5 ~~((44))~~ (46) "Victim" means any person who has sustained  
6 emotional, psychological, physical, or financial injury to person or  
7 property as a direct result of the crime charged.

8 ~~((45))~~ (47) "Violent offense" means:

9 (a) Any of the following felonies:

10 (i) Any felony defined under any law as a class A felony or an  
11 attempt to commit a class A felony;

12 (ii) Criminal solicitation of or criminal conspiracy to commit a  
13 class A felony;

14 (iii) Manslaughter in the first degree;

15 (iv) Manslaughter in the second degree;

16 (v) Indecent liberties if committed by forcible compulsion;

17 (vi) Kidnapping in the second degree;

18 (vii) Arson in the second degree;

19 (viii) Assault in the second degree;

20 (ix) Assault of a child in the second degree;

21 (x) Extortion in the first degree;

22 (xi) Robbery in the second degree;

23 (xii) Drive-by shooting;

24 (xiii) Vehicular assault, when caused by the operation or driving  
25 of a vehicle by a person while under the influence of intoxicating  
26 liquor or any drug or by the operation or driving of a vehicle in a  
27 reckless manner; and

28 (xiv) Vehicular homicide, when proximately caused by the driving of  
29 any vehicle by any person while under the influence of intoxicating  
30 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
31 any vehicle in a reckless manner;

32 (b) Any conviction for a felony offense in effect at any time prior  
33 to July 1, 1976, that is comparable to a felony classified as a violent  
34 offense in (a) of this subsection; and

35 (c) Any federal or out-of-state conviction for an offense that  
36 under the laws of this state would be a felony classified as a violent  
37 offense under (a) or (b) of this subsection.

1       (~~(46)~~) (48) "Work crew" means a program of partial confinement  
2 consisting of civic improvement tasks for the benefit of the community  
3 that complies with RCW 9.94A.725.

4       (~~(47)~~) (49) "Work ethic camp" means an alternative incarceration  
5 program as provided in RCW 9.94A.690 designed to reduce recidivism and  
6 lower the cost of corrections by requiring offenders to complete a  
7 comprehensive array of real-world job and vocational experiences,  
8 character-building work ethics training, life management skills  
9 development, substance abuse rehabilitation, counseling, literacy  
10 training, and basic adult education.

11       (~~(48)~~) (50) "Work release" means a program of partial confinement  
12 available to offenders who are employed or engaged as a student in a  
13 regular course of study at school.

14       NEW SECTION.   **Sec. 8.** Sections 4 and 6 of this act expire July 1,  
15 2006.

16       NEW SECTION.   **Sec. 9.** Sections 5 and 7 of this act take effect  
17 July 1, 2006.

18       NEW SECTION.   **Sec. 10.** Sections 1 through 4 and 6 of this act are  
19 necessary for the immediate preservation of the public peace, health,  
20 or safety, or support of the state government and its existing public  
21 institutions, and take effect immediately."

**HB 3277** - S COMM AMD  
By Committee on Human Services & Corrections

**ADOPTED 03/01/2006**

22       On page 2, line 2 of the title, after "RCW 9.94A.515;" strike the  
23 remainder of the title and insert "amending RCW 9.94A.712, 9.94A.712,  
24 9.94A.030, and 9.94A.030; adding new sections to chapter 9.94A RCW;  
25 prescribing penalties; providing an effective date; providing an  
26 expiration date; and declaring an emergency."

--- END ---